

and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will amend Article IV, Section 1 to clarify that the existing Vice Chairman is elected by the Board of Directors from among OCC's Member Directors³ and will be renamed the Member Vice Chairman. Article IV, Section I will also be amended to create the position of Management Vice Chairman which will be elected at the discretion of the Board of Directors, but the board will not be required to fill this position. Only OCC staff members will be eligible to serve as the Management Vice Chairman, and any person serving in this office shall not be eligible to serve concurrently in any other OCC office.

Article IV, Section 7 will be amended to provide for the duties and responsibilities of the Management Vice Chairman and to clarify the duties and responsibilities of the Member Vice Chairman. The duties of the Management Vice Chairman will include assuming all of the Chairman's responsibilities in the absence or disability of the Chairman, including presiding over meetings of the Board of Directors and the shareholders. The Member Vice Chairman will preside at such meetings and assume all of the Chairman's responsibilities only in the absence of the Chairman and Management Vice Chairman. The Member Vice Chairman will remain the chair of any committee responsible for evaluating the performance of OCC or the compensation of OCC's officers.

The proposed rule change also will amend Article III, Section 15(e) to add the office of Management Vice Chairman to the list of officers who may be granted emergency powers and who may be empowered to act on behalf of any other officer who is unable to fulfill any emergency powers granted to such office. Accordingly, the Management Vice Chairman position will add another person to OCC's line of succession, which should reduce the risk that OCC would be without qualified leadership. OCC believes it is important that a clear line of succession

be established and be as routine and trouble-free as possible. The addition of the office of Management Vice Chairman is intended to accomplish this goal. In addition, a conforming amendment to Article IV, Section 8 will be made to clarify that the President's duty to act in the place of the Chairman will arise only in the absence of the Chairman, the Management Vice Chairman, and the Member Vice Chairman.

Finally, a technical correction to Article IV, Section 1 is proposed. This section currently requires that the Board of Directors elect a senior management officer of OCC to be in charge of each OCC office that is (i) responsible for 20% or more of the volume of exchange transactions cleared through OCC or (ii) located in the same city as an exchange on which 20% or more of the volume of the exchange's transactions are cleared through OCC. OCC proposes to delete this provision because it believes that it is no longer necessary due to advances in systems design. OCC represents that the relevant exchanges are aware of this proposed change and concur with it.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because adding the position of Management Vice Chairman should strengthen the line of succession in the absence of the Chairman of the Board and will ease any transition from an existing Chairman of the Board to his or her successor.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR-OCC-97-08 and should be submitted by September 19, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38955; File No. SR-PCX-97-12]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change Modifying Rules on Disclosure of Financial Arrangements of Members and Notice of Filing and Order Granting Accelerated Approval of Amendment Thereto

August 20, 1997.

I. Introduction

On April 23, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the

² The Commission has modified the text of the summaries prepared by OCC.

³ To distinguish the title of the current Vice Chairman from the staff position of Management Vice Chairman, the modifier "Member" has been added to the office's title. Conforming changes have also been made to several other sections of OCC's by-laws to reflect addition of the modifier "Member" to the office's title.

⁴ 17 CFR 200.30-3(a)(12) (1995).

Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change modifying rules on disclosure of financial arrangements of Members. The proposed rule change was published for comment in Securities Exchange Act Release No. 38623 (May 13, 1997), 62 FR 27640 (May 20, 1997). The Commission received no comments on the proposal. On June 27, 1997, the Exchange amended the proposed rule change ("Amendment No. 1") to clarify certain aspects of the filing.³ This order approves the proposed rule change and grants accelerated approval to Amendment No. 1.

II. Description of the Proposal

The Exchange is proposing to make various changes to the PCX Rule 4.18, "Disclosure of Financial Arrangements of Members." Currently, Rule 4.18(a) requires disclosure of financial arrangements between Members only. In its filing, the Exchange proposed amending Rule 4.18(a) to require that a Market Maker, Floor Broker, Specialist or Member Organization that enters into a financial arrangement with any other Member or Non-Member shall disclose to the Exchange the name of such Member or Non-Member and the terms of the arrangement.

Second, Subsection (a) currently defines "financial arrangement" for purposes of Rule 4.18 as "(1) the direct financing of a Member's dealing upon the Exchange; or (2) any direct equity investment or profit sharing arrangement; or (3) any consideration over the amount of \$5,000.00 that constitutes a gift, loan, salary or bonus." The Exchange is proposing to clarify and expand the third clause to provide: "any consideration over the amount of \$5,000.00, including, but not limited to, gifts, loans, annual salaries or bonuses."

Third, the Exchange is proposing to eliminate Subsection (b), which currently provides that each market Maker shall inform the Exchange immediately of the intention of any party (1) to change any financial arrangement as defined in this Rule; or (2) to issue a margin call. It further provides that on a form prescribed by the Exchange, a Market Maker shall submit to the Exchange a monthly report of his use or extension of credit pursuant to this Section.

Fourth, the Exchange is proposing to eliminate Subsection (c), which

provides that the disclosure of financial arrangements pursuant to this Rule shall be the responsibility of all parties involved.

Finally, Subsection (d) currently provides that unless otherwise agreed, an Exchange Member shall submit to the Exchange notification of the initiation or termination of financial arrangements within ten business days of the effective date of such arrangements. It further provides that failure to disclose the terms of any financial arrangement to the Financial Compliance Department may result in disciplinary action by the Exchange. The Exchange is proposing to modify subsection (d) to provide that Exchange Members with financial arrangements must submit to the Exchange notification of the initiation, modification or termination of such financial arrangements within ten business days of the effective date of such arrangements or within such shorter period of time as the Exchange may require.⁴ It further states that failure to disclose the terms of such financial arrangements to the Exchange may result in disciplinary action. The Exchange believes that the proposal is consistent with Section 6(b) of the Act, and Section 6(b)(5) of the Act⁵ in particular, in that it promotes just and equitable principles of trade and protects investors and the public interest.

III. Discussion

The Commission believes PCX's proposed rule change is consistent with Section 6(b)(5) of the Act.⁶ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to further investor protection and the public interest.⁷

PCX proposes requiring disclosure of financial arrangements between Members and Non-Members. The Commission believes it is appropriate to require reporting of financial arrangements between Members and Non-Members, as such arrangements may be significant and if left unreported will have an impact on the Exchange's ability to monitor the financial status of Members.

The Commission believes that the Exchange's proposal to change the definition of "financial arrangement" to include "any consideration over the

amount of \$5,000.00, including, but not limited to, gifts, loans, annual salaries or bonuses" is reasonable. The Commission believes that expanding and clarifying the definition will ensure that certain arrangements, previously outside of the enumerated items in the definition of financial arrangement, will now be included, resulting in more accurate monitoring of Member financial arrangements.

The Exchange is proposing to eliminate Rule 4.18(b) which currently provides that Market Makers must inform the Exchange of the intention of any party to change financial arrangements or to issue a margin call. The Commission believes that elimination of this subsection is reasonable as Members are already required to provide notification of changes to financial arrangements after they occur pursuant to 4.18(b) as amended. The Commission believes that pre-notification of such changes is unnecessary and wasteful of Exchange resources. The Commission also believes it is appropriate to eliminate the requirement that a Market Maker notify the Exchange of the intention of any party to issue a margin call. Based on the Exchange's representations, the Commission believes that requirement is unnecessary, as the Exchange currently receives prompt notification from a clearing Member whenever a Market Maker's trading account liquidates to a deficit.⁸ Exchange clearing Members also provide the Exchange with capital information on lead Market Makers on a daily basis. For these reasons the Commission believes the notification by Market Makers of the intention of any party to issue a margin call is uninformative and therefore unnecessary.

The Commission believes the elimination of subsection 4.18(c), providing that the disclosure of financial arrangements pursuant to the rule is the responsibility of all parties involved, is reasonable. The Commission believes that this requirement is stated clearly in Rule 4.18(a), and is therefore redundant.

Finally, the Commission believes the Exchange's proposal requiring Exchange Members with financial arrangements to submit to the Exchange notification of the initiation, modification or termination of such financial arrangements within ten business days of the effective date of such arrangements or within such shorter period of time as the Exchange may

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Margaret J. Blake, Division of Market Regulation, Commission (June 27, 1997).

⁴ See supra note 3.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(5).

⁷ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ See supra note 3.

require, is reasonable.⁹ The proposal sets forth an absolute time frame within which information must be provided to the Exchange, while allowing the Exchange a certain level of flexibility in acquiring information in certain instances. The Commission believes such flexibility is necessary for adequate oversight of Member financial arrangements and will allow the Exchange to obtain information immediately, if necessary. The Commission further believes that it is reasonable for the Exchange to have the authority to subject Members to disciplinary action where they have failed to disclose the terms of financial arrangements to the Exchange. The Commission believes that such disclosure is necessary for appropriate monitoring of Market Maker activity. The Commission believes that the proposal will promote investor protection, as failure to disclose such arrangements could result in reliance on inaccurate information to the detriment of the Exchange and its Members.

The Commission finds good cause to approve Amendment No. 1 to the filing prior to the 30th day after the publication of the notice of filing because the Amendment does not affect the substantive rights of Members and accelerated approval will facilitate the uninterrupted implementation of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-97-12 and should be submitted by September 19, 1997.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the Act and the rules and regulations thereunder applicable to the PCX, and in particular Section 6(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-PCX-97-12) be and hereby is approved, and that Amendment No. 1 filed thereto be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-23048 Filed 8-28-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38960; File No. SR-PHLX-97-31]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to Certificate of Incorporation and By-Laws

August 22, 1997.

I. Introduction

On June 25, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend its Certificate of Incorporation and By-Laws.

The proposed rule change was published for comment in the **Federal Register** on July 10, 1997.³ No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

On May 21, 1997, the Phlx Board of Governors approved draft amendments to the Phlx Certificate of Incorporation and By-Laws that are designed to promote an enhanced governance structure for the Exchange. Thereafter,

with the Phlx Board's endorsement, the amendments were announced to the membership in accordance with Exchange By-Law Article XXII, Section 22-2.⁴

As no written request was made requesting a special meeting of the Exchange membership to consider the amendments, the Phlx Board on June 18, 1997 unanimously approved the proposed amendments for filing with the Commission.

Two of the most significant proposed changes to the By-Laws are reducing the size of the Board from 30 to 22 Governors and changing the composition of the Board to: 11 non-industry Governors, of whom at least 5 must be public Governors; 10 industry Governors;⁵ and a Chairman of the Board who will be the full time, paid Chief Executive Officer of the Exchange.⁶

The proposed By-Law amendments specify the composition of the 10 industry Governors as follows: 2 Equity Floor Industry Governors, 1 Equity Options Floor Specialist Governor and 1 Equity Options Floor Registered Options Trader Governor (all of whom must work on the Exchange Floor or be a general partner, executive officer or member associated with a member organization primarily engaged in business on the Exchange Floor); 1 Equity Options Floor Broker Governor (who must work on the Equity Options Floor); and 5 Off-Floor Governors.⁷ Except for the Chairman of the Board, all Governors are subject to term limits of two consecutive three year terms.⁸

The manner in which the Vice-Chairmen of the Board are selected also has been changed. Instead of the Vice-

⁴ In accordance with Phlx By-Law Article XXII, Section 22-2, the membership was notified of the proposed amendment by a memorandum dated June 4, 1997, and no written request for a special meeting of the Exchange membership was filed within the 10 day period allowed by the By-Law. Thereafter, on June 18, 1997, a membership petition was received by the Board pursuant to Phlx By-Law Article XXII, Section 22-1, which offered, in writing, certain proposed amendments to the By-Laws. On August 1, 1997, the petition was submitted to the membership for vote. The petition failed for lack of the required quorum.

⁵ See By-Law Article I, Section 1-1 (defining "industry," "non-industry," and "public").

⁶ See By-Law Article IV, Section 4-1 and By-Law Article V, Section 5-1. Various other amendments to the By-Laws have been made in connection with these changes. For instance, references to "President" have been changed to refer to the "Chief Executive Officer" or "Chairman of the Board" and revisions to the number of Board members necessary to effect certain Board actions have been made, e.g., in most cases where the affirmative vote of 15 of the current 30 Governors was required, the By-Law is changed to state that a majority vote is required.

⁷ See By-Law Article IV, Section 4-1.

⁸ See By-Law Article IV, Section 4-3.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities and Exchange Act Release No. 38809 (July 1, 1997), 62 FR 37109.

⁹ See supra note 3.